United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

ORIGINAL WITH PROOF OF SERVICE

75-7061

TO BE ARGUED BY
EUGENE J. MORRIS
MARTIN STUART BAKER

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

P/S

TRINITY EPISCOPAL SCHOOL CORPORATION and TRINITY HOUSING COMPANY, INC.,

Plaintiffs-Appellants,

ROLAND H. HARLEN, ALVIN C. HUDGINS and CONTINUE,

Intervening Plaintiffs-Appellants,

v.

GEORGE ROMNEY, SECRETARY OF DEPT. OF HOUSING AND URBAN DEVELOPMENT, S. WILLIAM GREEN, REGIONAL ADMINISTRATOR, DEPT. OF HOUSING AND URBAN DEVELOPMENT, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, CHARLES URSTADT, COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL, N.Y. STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, THE STATE OF NEW YORK, JOHN V. LINDSAY, ALBERT A. WALSH, HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK, THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK, DONALD H. ELLIOTT, WALTER MCQUADE, IVAN MICHAEL, GERALD L. COLEMAN, CHESTER RAPKIN, MARTIN GALLENT, ABRAHAM D. BEAME, SANFORD D. GARELIK, PERCY E. SUTTON, ROBERT ABRAMS, SEBASTIAN LEONE, SIDNEY LEVISS, ROBERT T. CONNER and THE CITY OF NEW YORK,

Defendants-Appellees,

STRYCKER'S BAY NEIGHBORHOOD COUNCIL INC.,

Intervening Defendant-Appellee.

APPELLANTS' REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF CASES

TABLE OF AUTHORITIES

STATEMENT

The answering brief of defendants-appellees does not even purport to answer appellants' brief on appeal -- it merely states hollowly that Judge Cooper's decision below was correct in all respects.

Accordingly, this reply brief will respond to the seven points of defendants-appellees' brief within the framework of appellants' brief.

ISSUES PRESENTED FOR REVIEW
Defendants' Brief p. 1)

This is a case where the government, after creating an imaginative plan to reverse the deterioration of a neighborhood and where hundreds of millions of dollars were expended to execute that plan for more than a decade, arrogantly did a turnaround and proceeded to violate its commitments to those who relied on them in a manner which is destroying the benefits obtained from the plan and is leading the neighborhood into becoming a segregated slum.

As we have shown there are a number of violations by defendants and a number of items of relief sought by plaintiffs, all of which constitute a number of issues presented for review on this appeal. (Appellants' Brief pp. viii-xi,

14-17). To attempt to limit the appeal to the single issue of 160 units involved in Site 30 as the Trial Court did and defendants assert in their brief does not properly present the issue.

I. THE BREACH OF CONTRACT
(Appellants' Brief pp. 18-46)

A. THE PURPOSE OF THE URBAN RENEWAL PLAN IS TO CREATE A BALANCED INTEGRATED COMMUNITY.
(Responding to POINT I Defendants' Brief pp. 3-5)

The contention in Point I (defendants' brief p. 4) that plaintiffs' "hope" was that they "would not live in a truly racially and economically integrated area" is grievously wrong. Precisely the opposite is true. It is to preserve the Area as "truly integrated" and to prevent it from slipping into a segregated ghetto that this action was brought. Plaintiffs moved into or stayed in the Area and made large investments in it because they knew it would be integrated. At the time they made their commitment the Area was being effectively integrated pursuant to the clear objectives of the Plan. It is only since the many violations of the Plan by defendants have occurred, beginning in 1970, that the integration of the Area is breaking down and the trend is being reversed into

segregation. Plaintiffs are making every effort to prevent this.

The references at p. 5 of the defendants' brief to Exhibit E and Tr. 1365-67 do not establish, as defendants argue, that plaintiffs did not desire to live in a truly integrated area; in fact, these citations establish quite the contrary, namely, that plaintiffs wished to preserve the integrated nature of the Area.

With respect to the right of relocatees to return, (referred to at p. 4 of defendants' brief) that objective has largely been attained by the low income units already built into the project. Of the few legal relocatees still seeking re-entry into the Area, there will be sufficient low income units in the new projects still to be built (539 low income units, Exhibit S) to take care of them. That is not the problem. Rather the problem is that the City has allowed welfare and other multi-problem families who were not relocatees and for whom housing was not available elsewhere, to move into the Area, some as squatters and some as excess low income families in the 70% middle income portions of the new buildings, all concededly in violation

of the Plan. (3170,3184,3185,3193-3195,3205-3207)

The attempt, through semantics, to distinguish between "destruction and re-creation" and "preservation and renewal" (Defendants' Brief p. 4) as the purpose of the Plan, is specious. It is unimportant how the Plan is characterized. All agree that its purpose is to renew the Area and reverse the trend of deterioration which was occurring before the Plan was approved. Indeed, the Trial Court at pages 37-42 of its opinion makes clear that the overriding objective of the Plan is "to create a racially and economically integrated community" p. 37 and has "the objective of maintaining economic integration." p. 39. All agree that while the defendants were performing the Plan in accordance with its original concept (prior to 1970) the Area was being renewed as a fine, integrated and balanced community. The point of departure arose when the defendants beginning in 1970 started to violate the clear objectives of the Plan in a manner which would reverse its true purpose. That is what this suit is really all about.

The needs of the "entire community" referred to in defendants' brief at p. 5 were being taken care of by the

2500 unit and the 70-30 limitations originally fixed as adequate and adhered to up to 1970; it was only when the defendants breached these limitations that the needs of the "entire community" started to be disregarded. Since then the City has acted in a manner inconsistent with the Plan and to the detriment of the stable citizens in the Area, a procedure which must inevitably lead to segregation. Thus, to reverse Judge Cooper will not deprive people "of their equal rights to decent housing" but will, instead, ensure performance of the Plan as originally contemplated, with the rights of all preserved.

B. THE DEPLORABLE CONDITIONS TESTIFIED TO BY PLAINTIFFS' WITNESSES ESTABLISH THAT THE AREA IS BECOMING A GHETTO. (Responding to POINT II Defendants' Brief pp. 5-8)

The statistics referred to at p. 6 of defendants' brief all involve the period prior to 1970 when there was no question that the Area was improving as called for by the Plan. Moreover all such statistics referred to the entire West Side and were not limited to the Area. Consequently, these statistics are not competent on the issues involved on this appeal.

Plaintiffs adduced extensive testimony on the trial regarding an increase in crime in the Area since 1970 (See summary of this testimony Appellants' Brief pp. 42-46). Defendants at p. 6, however, place undue reliance on Judge Cooper's accepting the testimony of the Acting Police Captain that there was a marked decrease in crime since 1971. This overlooks the findings by the Trial Court at pp. 72-75 that there was "convincing testimony" that conditions were "deplorable" and "reprehensible" in the Area and that "the description of these revolting incidents and conditions was most disheartening." It also overlooks the fact that the testimony of Mr. Prezioso was superficial and based on police statistics of doubtful reliability. (3629-3631,3660,3662). Moreover, the figures introduced were for the area from 86th to 110th Streets, Central Park West and Riverside Drive, far larger than the Area (Tr. 3628,3664) and they showed that all crimes had increased from 1970 to 1973 except felonious assault (Tr. 3632a, 3654-7, 3665-6, Exhibits AJ and AK). In fact robberies increased 14 times; burglaries 4 times and total felonies were up 2 1/2 times. At the same time there was an increase in misdemeanor arrests and there were narcotics

used in the schools.

In any event Mr. Prezioso (who was only acting as Captain on a temporary basis 3652) testified that the crucial element was "fear of crime" (3656, 3657, 3666) and as the plaintiffs' witnesses testified fear of crime is rampant in the Area. The 24th Precinct led the City in crime and still is in an "unpalatable" state.(3648)

As to the reliance by the Trial Court on the testimony of Mr. Garcia (Op. 75) that conditions had improved by 40% since 1972, this overlooks the extensive testimony by Mr. Garcia of the deplorable conditions which did exist in his building during this period (Tr. 1647-1663, 1680). An improvement in the conditions in a particular building which may result from a number of factors such as better management and control does not signify an improvement in the entire Area and certainly should not be deemed "persuasive" as it was by the Trial Court, particularly where the testimony is that the building continues to have serious problems despite the improvement.

The statement at p. 7 of defendants' brief that "As to plaintiffs' witnesses Judge Cooper properly found

that they were members of CONTINUE and represented a small portion of the community. [Op 75]." is incorrect. A reference to the Trial Court's opinion shows that it stated: "As to the eight Area residents who testified on behalf of plaintiffs, there was a marked concentration of witnesses from a small portion of the Area." Moreover, CONTINUE represents 1000 families in the Area (152-154) not just "a small portion of the community."

The out of context reference to the testimony of Roger Starr referred to at p. 82 of the Trial Court's opinion, that if the Plan called for 1000 or 5000 units it might tip, is entirely misleading in view of the explanation of that statement by Starr of his concept of tipping (Tr. 305-368). Indeed Starr's entire testimony (Tr. 184-453) summarized at pp. 6-9 of Exhibit B in Plaintiffs' Post Trial Brief (included in the Record) sets forth dramatically his concept that the 2500 figure was arrived at as a result of a balancing of the need to take care of the legal relocatees with a proper admixture of low and middle income units which would preserve the integration of the Area and not cause tipping. His testimony was that exceeding the 2500 limit would cause the Area to tip.

Equally out of context and misleading is the comment (Op. 104) that plaintiffs' experts testified that low income families "cannot be associated with a propensity for social problems." A reading of the testimony of both Kristof and Starr (Tr. 231, 2547) does not support the conclusion arrived at by the Trial Court, in fact, Starr's and Kristof's testimony establishes the contrary.

It is immaterial that there is no funding currently for Site 4, as pointed out at p. 8 of defendants' brief, since it has been redesignated for low income housing and will be built as such as soon as funds become available, unless restrained by this Court.

It is significant that defendants nowhere in their brief challenge plaintiffs' contention that the 2500 unit and 70-30 ratio limitations have actually been violated by the City.

C. THE CITY MADE BINDING ORAL REPRESENTATIONS ABOUT THE NUMBER OF LOW INCOME RESIDENTS. (Responding to POINT III Defendants' Brief pp. 8-10)

The citation in appellants' brief (pp. 4,5) of p. 1091 of the Record is challenged by defendants at p. 9 of their brief as not supporting the contention that Trinity

was advised of the 2500 unit and 70-30 ratio. A reading of Mr. Lumbard's testimony on that page indicates that he said he did recall being so advised "back in the period '64-'65" and that "it was part of the mass of material that we received at some point from Demov and Morris." As to the 70-30 ratio that was a provision of the Trinity contract and is quoted at p. 6 of appellants' brief.

Plaintiffs have never maintained that the 2500 figure was "fixed and immutable." It was always an approximation and a small variance from it was always contemplated, but not the kind of variance of 20% to 50% which has occurred and which defendants do not challenge in their brief.

Moreover as we have shown in appellants' brief (pp. 10-12) the City frequently reiterated the representation to the public that there would be a 2500 unit and 70-30 ratio limitation and as we have established, as a matter of law, (appellants' brief pp. 19-25) plaintiffs were entitled to rely on these statements and in fact did so. They were clearly not barred by the parol evidence rule (appellants' brief pp. 35-38) nor did the merger clauses in plaintiffs' contracts preclude reliance upon them. (appellants' brief pp. 38-42)

The cases cited at pp. 9 & 10 of defendants' brief do not controvert plaintiffs' contentions.

Plum Tree, Inc. v. N.K. Winston Corporation, 351 F. Supp. 80,83,84 contains a scholarly discussion of the principles of Mitchell v. Lath, 247 N.Y. 377, 380 and Fogelson v. Rachfay Construction Co., 300 N.Y. 334, both cases discussed in appellants' brief pp. 35,39. Plum Tree held oral testimony was barred because "every one of the claimed promises is a proper and expectable term of a shopping center lease," (351 F.Supp. at 84) whereas in Trinity the representations relied on were not of the type that would have been included in an urban renewal sponsor's contract and, as we have argued, is therefore admissible.

Jones Memorial Trust v. TSAI Investment Services, Inc., 367 F. Supp. 491, 499, after citing Mitchell and and Fogelson, concludes that "the purported oral agreement squarely contradicts and is inextricably related to the aforesaid written contract." In Trinity the oral testimony does not contradict the written terms and, in fact, is fully consistent with them. Consequently it is admissible since it meets all the requirements of the Mitchell and

Fogelson cases.

Citizens Committee for Faraday Wood v. Lindsay, slip op. 585, 597 (2d Cir. Dec. 5, 1974) is not in point since it held that a developer had no claim against the City in connection with a project that aborted. In Trinity the project was not aborted but rather was approved by the Board of Estimate and was completed. No claims as to it are being made against the City except to the extent that the Trinity contract is being breached subsequent to the completion of the project by the deterioration of the entire Area.

D. THE SQUATTERS HAVE BEEN AND STILL ARE DISRUPTIVE TO THE COMMUNITY.
(Responding to POINT IV Defendants' Brief pp. 10, 11)

Defendants at p. 10 of their brief seem to question our statement that the squatter homes "are deplorable and not fit for human habitation." (Appellants' Brief p. 25). Aside from the fact that every one of plaintiffs' witnesses who lived in the Area testified that the illegal squatters were contributing to the deterioration and crime in the community and were living under deplorable conditions, the U.S. Attorney, himself, on cross-examination of Miles Owen (who is black) brought out the full horror of these conditions.

(2589-2596). In fact, the testimony was so graphic as to the nature of these conditions that Judge Cooper was impelled to state that the testimony was "alarming, disquieting and darn near horrifying" and that he was "upset" by it. He also stated "that any civilized person would be revolted if the City allowed human beings to exist that way" and that it showed "a most frightful inconsiderateness of human beings" (2595-2597).

Judge Cooper's comments (Op. 83,84) seemed to be implying that the deplorable conditions which exist in the Area are partly the plaintiffs' own fault because they have not done enough work to stop them. Aside from the basic unfairness of this accusation it should be noted that the citizens who were victimized by this reprehensible behavior were fearful of complaining, because of the danger of reprisals against themselves and their families. They are trapped in the Area and they and their families must come and go through it every day. Their very lives are at stake in view of the criminal element which has been allowed (even encouraged by the City) to reside as their next door neighbors. They can scarcely be faulted for not running to the police

every time a new incident occurs since they were occurring constantly and they and the police were helpless to curb such behavior. This reference by defendants in their brief at pp. 10, 11 to the Trial Court's comments reflects their callous disregard of the true plight of these innocent sufferers of the City's breach of faith. This case was brought to help right these wrongs at some peril to plaintiffs.

It is respectfully submitted that the transcipt citations (1320-1321, 1819-1825) to the testimony of Fine and Liebert at p. 11 of defendants' brief do support the statements in appellants' brief at pp. 13, 25 regarding the method of entry into the Area by the squatters. In any event defendants do not deny that the statements made are true.

II. THE ENVIRONMENTAL STUDY
(Appellants' Brief pp. 47-63)

A. THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FAILED TO COMPLY WITH THE NATIONAL ENVIRONMENTAL POLICY ACT AND THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN NOT SO FINDING.
(Responding to Defendants' Brief Point II pp. 14-16)

Plaintiffs are entitled to injunctive relief pending the compliance of the Department of Housing and Urban Development with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq., hereinafter "NEPA"). The court below committed several points of reversible error in not so finding, as set forth in appellants' brief. (pp. 47-63)

For purposes of this appeal, the trial cannot be considered to have cured the government's lack of compliance with NEPA, as is asserted by defendants. The evidence adduced on the trial establishes that there was no consideration of alternatives as part of the review conducted by the Department of Housing and Urban Development (see testimony of John Maylott, the Director of the HUD Area Office, the official with direct responsibility for NEPA compliance at Tr. 1324, see also, William Green, the HUD Regional Office Director at 3365-3367). Establishing that fact at trial does not constitute a "full"

consideration" of alternatives which would serve to cure the error of the Department of Housing and Urban Development in its NEPA considerations on the underlying decisions. (Calvert Cliffs' Coordinating Committee v. A.E.C., 449 F.2d 1109, D.C. Cir. 1971).

The consideration of alternatives is essential to compliance with NEPA. Monroe County Conservation Council v. Volpe, 472 F.2d 693 (2d Cir., 1972; National Resources Defense Council v. Morton, 458 F.2d 827 (D.C. Cir., 1972). This court has held that mere passing mention of alternatives would not satisfy the NEPA requirement, Ibid. The passing mention of alternatives made in this case by the applicant City of New York and referenced by the Trial Court (Op. 113) do not serve to remedy the inherent defect in HUD's environmental review.

Section 102(2)(D) of NEPA provides that all agencies of the federal government shall

> "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources".

There was a strong unresolved conflict relative to the impacts of the use of Site 30 as set forth in the changed

proposal of the City of New York. This unresolved conflict was evidenced by the considerable controversy surrounding the decision. These conflicts were recognized by the federal officials with direct responsibility for these decisions. (3095-3096,3116,3364). This unresolved conflict was shared not only by citizens in the community and various government officials, but was also reflected in the official position of responsible government agencies. For this reason the New York State Planning and Development Clearinghouse and the New York State Department of Environmental Conservation took the official position that an environmental impact statement was required to consider fully these impacts. (See letter of John C. Harmon, New York State Department of Environmental Conservation, dated August 18, 1971 and letter of Thomas J. McDonald, New York State Planning and Development Clearinghouse Administrator, dated July 30, 1971, both a part of defendants' Exhibit "B").

The failure to consider the implications of alternative sites, alternative designs and the alternative of not building housing at the specific site were the reasons why Judge Ward recently issued an injunction on the construction of a postal facility and air rights housing on

West 29th Street in Manhattan. In that case, Chelsea Neighborhood Associations v. United States Postal Service, (74 Civ. 3702, decided February 25, 1975), it was held that the failure to consider the alternative of no action as well as the insufficient consideration of other alternatives, renders the approval of the postal facility with its air rights housing illegal, as not complying with NEPA.

Defendants-Apellees are silent in their brief on the issue of the preparation of an environmental impact statement for both the whole West Side Urban Renewal Area and the specific decision at Site 30. The holding of this court in Conservation Council of Southern Vermont v. Secretary of Transportation (Dkt. Nos. 73-2629, 74-2168, 73-2715, December 1, 1974) requires the filing of an environmental impact statement on the broad governmental decisions which form the basis for specific project decisions. In the absence of such an environmental impact statement, individual projects or segments of the whole are not considered in their proper context, and the whole context may never receive environmental scrutiny as required by NEPA. The particular

project decision at Site 30 is part of the overall context of the Plan for the renewal of the Area. This court should require the preparation of an environmental impact statement for the whole West Side Urban Renewal Area before individual project decisions in it can be made.

Judge Cooper finds that several issues were analyzed by the government as part of its special environmental clearance. He finds that certain other issues were not considered, stating that because they were not subject to quantification or measurement, they did not have to be considered. (Op. 102) The Trial Court was wrong as a matter of law in this assertion. For this error, the Trial Court should be reversed and an injunction should issue pending the completion of an acceptable environmental impact statement or review. Such an acceptable statement would include considerations of such issues as set forth in the HUD definition of environment which were not considered. These issues are set forth in more detail at Page 60 of appellants' brief.

Although the testimony of Harry Foden (2836-2922) referred to at page 16 of defendants' brief is persuasive it should be noted that plaintiffs do not rely exclusively upon his testimony. We rely, in addition, on the expert testimony of numerous witnesses, including Roger Starr, the present Administrator of the New York City Housing and Development Administration, Walter Fried, Commissioner of the New York City Housing Authority (persons with responsibility for maintaining housing conditions in the Area) and the testimony of numerous citizens residing in the Area.

A large number of environmental effects are at issue surrounding the instant decision and were not considered fully by the government as required by NEPA.

III. THE OTERO DOCTRINE
(Appellants' Brief pp. 64-77)

A. THE OTERO DOCTRINE GOVERNS THE PLAINTIFFS' CLAIM FOR RELIEF.
(Responding to POINT V Defendants' Brief pp. 11-13)

We have established (Appellants' Brief pp. 64-69) that the Trial Court erred in narrowing the Otero doctrine to racial factors only. This Court recently affirmed that, as we have argued, low income families are equated with racial minorities. In Faraday Wood v. Lindsay, slip op. 585 (2d Cir. Dec. 5, 1974) this Court said at p. 591:

> "Indeed, the whole rationale for carefully scrutinizing governmental actions that adversely affect traditional public housing projects is that these projects are designed for low-income persons and courts are not blind to the fact that racial minorities are disproportionately represented in the lower-income levels of our society. There is no disproportionate overrepresentation of minorities in middle-income levels. Hence the assumption used in the typical public housing case is not valid here."

Thus, the Trial Court erred in distinguishing Trinity from Otero on the ground that one dealt with low income persons and the other with racial issues.

Boyd v. Lefrak, slip op. 1395 (2d Cir. Jan. 22, 1975) cited by defendants at p. 11 is not in point. It dealt solely with the establishment by a private landlord of income

requirements for admission to housing which this Court held did not amount to racial discrimination.

The economic range of low income families precludes moderate income tenants such as civil servants, police and firemen and others whose income exceeds $14,000 per annum,[1] all of whom are excluded from the Area except in the middle income projects. This is supported by the testimony of plaintiffs' experts Starr (184-453), Fried (457-840,863-964, 2336-2355), Sulzberger (1682-1784), Kristof (2477-2488, 2504-2682) and Gaynor (2702-2754,2796-2833) that the neighborhood is actually deteriorating as a result of the infusion of large numbers of low income, welfare and multi-problem families. Thus, the Trial Court's finding that low income people cannot be associated with anti-social behavior or neighborhood deterioration (Op. 60,61) cannot be sustained.

As to the sale of brownstones Fried and Haldenstein both testified to a marked decline in values in the Area after 1970 (584-585, 2162-2175, 2209-2213, letter dated May 22, 1974 sent upon instruction of the Court, 2168-2169)

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[1] Approximately $14,000 is the effective income limit under Section 236. The limit of $17,200 (Op. 58,59) referred to by the Trial Court only applies to large apartments under the exception limits and these apartments have been reserved for large welfare families in the Section 236 buildings.

and contrary to the statement at p. 70 of the opinion was due to the conditions in the Area and not "generally unfavorable economic conditions" which did not exist in the period from 1970 to 1974 when the trial took place. Moreover, Haldenstein's figures set forth in his letter of May 22,1974 and his testimony shows that almost no rehabilitation of brownstones occurred after 1970 whereas there were hundreds rehabilitated before 1970 (2196). The fact that resales of rehabilitated brownstones increased after 1970 as noted at p.71 of the Trial Court's opinion indicates that people were getting out of the Area instead of the contrary, as the opinion would seem to imply.

The testimony on the trial established that middle class people are fleeing the Area. Two of the witnesses who testified Liebert (1855-1858), Gratz (3014-3027) actually did move after expending large amounts of money and time on rehabilitation jobs and others have threatened to leave unless the situation is turned around (see e.g. Friedberg 2445-2446).

It is submitted that the increase in the number of low income units projected into the Area by the government agencies is "egregiously" wrong and as in the Otero situation should not be countenanced by this Court.

As to the "pocket ghetto" situation, which was deemed impermissible in Otero, defendants' attempt to distinguish this case from Otero by stating that "the statistics in Otero were as to the entire Lower East Side," is incorrect. A "pocket ghetto" means a small (pocket) area not the "entire Lower East Side". The 91st Street block is just such a "pocket" area and is definitely encompassed within the "pocket ghetto" concept of Otero.

There was overwhelming evidence that the Trinity block was becoming a ghetto; indeed, that is why this action was brought. The conditions on this block and the Area were intolerable for the Trinity School students and faculty as testified to by Mr. Lumbard whose daughter currently attends the school (842) and who lives 7 blocks from the school (1021-1029). It is clear that imposing the additional 160 units of low income housing into Site 30 on top of the already dense concentration that exists on the block will seriously exacerbate the situation and will result in the type of pocket ghetto prohibited by Otero.

IV. THE CHANGES IN THE PLAN
(Appellants' Brief pp.79-90)

A. THE DESIGNATIONS OF SITES 4 AND 30 BY THE CITY PLANNING COMMISSION AND THE BOARD OF ESTIMATE DO NOT COMPLY WITH THE LAW.
(Responding to POINT VII Defendants' Brief pp. 17, 18)

We have established (Appellants' Brief pp. 79-90) that the City failed to process the plan change under the applicable provision of law and to obtain the written consent to the change of the owners and lessees in the Pilot Project Area. Neither the Trial Court nor defendants deny that this is so. They merely argue that these are "technical contentions" and that the procedures which were followed constitute "substantial compliance".

As we have established these contentions are not merely "technical" and they cannot be brushed aside without substantially impairing plaintiffs' rights. The procedures followed prejudiced the rights of plaintiffs in a material way since they have changed the entire Area in which plaintiffs have made substantial investments. In effect, plaintiffs have been deprived of procedural due process by the improper procedures pursued by the City.

CONCLUSION

The opinion of Judge Cooper is pervaded by error both of law and fact and nothing in defendants' brief establishes the contrary.

This case cries for action by the Court to curb the acts of the government, rooted in an arrogance of power, which violate the rights of citizens in the performance of a joint effort to resuscitate a neighborhood.

Appellants have established that

1. there have been a number of breaches of contract which have caused injury to plaintiffs;

2. the environmental study made by the government does not comply with the law;

3. the Otero doctrine requires that the governmental actions in violation of the Plan be curbed; and

4. the method of processing the Plan changes do not comply with the law and have resulted in injury to the plaintiffs.

Accordingly Judge Cooper's decision should be reversed and injunctive relief should issue.

Respectfully Submitted,

DEMOV, MORRIS, LEVIN & SHEIN
Attorneys for Plaintiffs and
Intervening Plaintiffs

Eugene J. Morris,
Martin Stuart Baker,
Of Counsel

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Robert La Grassa, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 62-20 60th Rd Maspeth N.Y.

That on the 7 day of March, 1975 deponent personally served the within Appellant's Reply Brief upon the attorneys designated below who represent the indicated parties in this action and at the addresses below stated which are those that have been designated by said attorneys for that purpose.

By leaving 2 true copies of same with a duly authorized person at their designated office.

~~By depositing _____ true copies of same enclosed in a postpaid properly addressed wrapper, in the post office or official depository under the exclusive care and custody of the United Stated post office department within the State of New York.~~

Names af attorneys served, together with the names of the clients represented and the attorneys' designated addresses.

1. Hon. Paul J. Curran
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Robert La Grassa

Sworn to before me this
7 day of March, 1975

Michael DeSantis

MICHAEL DeSANTIS
Notary Public, State of New York
No. 03-0930908
Qualified in Bronx County
Commission Expires March 30, 1975

Received 3 copies of the within
Appellants Reply Brief
this 2 day of March, 1975.

Sign _____

For: Hon. Louis J. Lefkowitz Esq(s).

Att'ys for State of New York

Received 3 copies of the within
Appellant's Reply Brief
this 7 day of March, 1975.

Sign Marguerite Thomas

For: Martin S. Thomas Esq(s).

Att'ys for Intervenors
Defendants Appellee

Received 3 copies of the within

this ___ day of _____, 19___.

Sign _____

For: _____ Esq(s).

Att'ys for _____

Received 3 copies of the within

this ___ day of _____, 19___.

Sign _____

For: _____ Esq(s).

Att'ys for _____

Louis J. Lefkowitz